

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (O) NO. 2013 OF 2018
IN
SECOND APPEAL NO. 424 OF 2011

SMT. MANABAI FAJITRAO SHENDE (DEAD) AND OTHERS VS SMT. TARABAI W/O GOPICHAND
KHADSE AND OTHERS

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri. Sachind Deshpande, Advocate for appellant.
Shri. S. D. Ingole, Advocate for respondent Nos.1 to 4.
Shri. G. H. Barange, Advocate for respondent Nos.6 to 9
and 11 to 13.

CORAM : ANIL L. PANSARE J.

DATE : 14/06/2023

By the present application, appellants are seeking condonation of delay in filing application for restoration of second appeal.

2. Heard. The second appeal was dismissed for want of prosecution on 23/06/2014. The reasons put forth by the appellants in not filing application within time is that the appellants were not aware of the dismissal of the appeal. One of the relative informed the appellant about dismissal of the appeal, when he met with his relative in village for some

function (details not given). The appellants thereafter approached counsel.

3. It is the case of the appellants that the original counsel was also not aware of the dismissal of the appeal and therefore, delay has been caused in filing the application.

4. Learned counsel for non applicant Nos.1 to 4 submits that the delay has not been justified. He further submits that the appeal was dismissed for want of prosecution on earlier occasion also. The appeal was restored on the file and again dismissed. He further submits that there is a huge delay of 1549 days and hence, prayed for rejection of the application.

5. It indeed appears that the appellants are little casual. The delay has also been not properly justified. There is absolute no reason why the counsel for appellants did not act promptly. Nonetheless, party should not suffer for the lapses committed by the counsel, but then even the reasons for delay has not been properly justified.

6. At this stage, the learned counsel for appellants submits that the appellants will attend the

appeal diligently. On the basis of such assurance, it will be appropriate to give one more opportunity to the appellants to put forth their case on merits. At the same time, the appellants should be put to costs for acting casually in filing the application. Therefore, I pass following order :-

ORDER

(A) Application is allowed, subject to costs of Rs.5000/- to be paid by the appellant to the non-applicant Nos.1 to 4 within two weeks from today.

(B) Upon payment of costs and production of proof of such payment, the delay shall stand condoned and thereafter, the second appeal be restored on file.

7. Application is disposed of in above terms.

JUDGE